IN THE SUPREME COURT OF THE UNITED STATES.
October Term 1949.

No. 508

O. O. OWENS, *Petitioner,*

vs.

THE UNITED STATES OF AMERICA, *Respondent.*

PETITION *for* REHEARING.

Your Petitioner, O. O. Owens, respectfully asks this Honorable Court to grant a rehearing and to reconsider his Petition for Certiorari requiring the United States Court of Appeals for the Tenth Circuit to certify to this Court for its review and determination the case of *O. O. Owens, Appellant,* v. *The United States of America, Appellee,* No. 3870, on the docket of said United States Court of Appeals; and in support thereof your Petitioner states:

Since Petitioner's Petition clearly presented for this Court's consideration flagrant denials to Petitioner of due process of law by Respondent, by its officers, agents and attorneys, by the Board of Tax Appeals and by the United States Court of Appeals, the facts of which were not denied or attempted to be refuted by Respondent, and—

Since no written opinion was promulgated indicating the basis and reasons for denying on February 13, 1950, the Petition for Certiorari filed herein December 29, 1949—

Petitioner can only assume that such denial of his Petition was predicated upon the policy of this Court as outlined, defined and explained in the address delivered September 7, 1949, to the American Bar Association by the Honorable Chief Justice of the United States, wherein the Honorable Chief Justice is reported to have, in part, stated:

> "* * * To remain effective, the Supreme Court must continue to decide only those cases which present questions whose resolution will have immediate importance far beyond the particular facts and parties involved. Those of you whose petitions for certiorari are granted by the Supreme Court will know, therefore, that you are, in a sense, prosecuting or defending class actions; that you represent not only your clients, but tremendously important principles, upon which are based the plans, hopes, and aspirations of a great many people throughout the country. * * *"

Obviously Respondent extended and enlarged the policy stated by the Honorable Chief Justice, as evidenced by the statement on page 4 of its Brief in Opposition filed herein, to-wit:

> "* * * The case turns on its own peculiar facts. No general question of importance is raised which calls for further review."

Apparently this Court accepted Respondent's view and contention, as conforming to this Court's policy, for denying Petitioner's Petition herein.

Amendment V to the Constitution, in part, reads:

> **"NO PERSON shall * * * be deprived of life, liberty, or property, without due process of law; * * *." (Emphasis mine.)**

Said Amendment does not contain the qualification, sought to be applied by Respondent, that it applies only to all persons collectively and generally, nor that the ag-

grieved person must be one of a class nor that his constitutional rights will be protected only in a class action.

Said Amendment recognizes and makes the rights of each individual of equal importance to the rights of a class of individuals, because the denial of due process to any person would countenance and quickly lead to a denial of that right, not only to classes of persons, but to ALL PERSONS.

Said Amendment V, and in fact the entire Constitution with all Amendments thereto, was designed and intended to prevent the creation of classes of persons with rights superior to those of the individual person. As part of the Bill of Rights it was designed and intended to protect the rights of the individual person, not the rights of classes of persons.

The language of Amendment V is perfectly clear. That language was designed to, and intended to, and if followed will protect the private rights of the individual person without regard to whether a judicial decision involving due process of law affects the rights of all persons generally, or of a class of persons, or of any one else whomsoever.

The denial of due process to an individual person is *ipso facto* the denial of the right of due process to every person and to every class of persons.

The peculiar facts out of which the denial of due process in the instant case arises are of general importance. But, the important question is: Was the individual person denied due process of law?

If Petitioner was denied certiorari upon Respondent's contention, Brief 4,

> "* * * The case turns on its own peculiar facts. No general question of importance is raised which calls for further review.",

then, apparently such denial of certiorari was based upon the assumption that the admitted peculiar facts would not affect the rights of classes of persons, or the rights of all persons generally—without considering whether due process had been denied Petitioner.

Every case has its own peculiar facts and is supposed to turn upon those facts. If this be the basis of the denial of certiorari in the instant case, does it mean that the constitutional right to due process, of an individual person, may be denied with impunity merely because the admitted peculiar facts affect the private rights of the individual person only, or because the identical peculiar facts are not common to all persons generally, or to a class of persons?

Does it further mean that this Court will not enforce Amendment V to protect the right to due process of an individual person?

Does it mean that this Court will not enforce the right guaranteed by Amendment V in favor of each person by protecting each person against conspiracies and frauds of public officers and the connivance of such public officers with rogues to rob a person or citizen of his property by depriving him of due process of law—unless such conduct and denial of due process is general as to all persons, or to all persons of a class of which class such person is a member?

Does it mean that the particular frauds and the connivance of public officers with rogues to rob a citizen of his property by a denial of due process of law, as was proved and established by Petitioner in this case and which was not denied or attempted to be refuted by Respondent, must become general against all taxpayers, or against classes of taxpayers, before the constitutional question of denial of due process becomes of sufficient importance to

warrant this Court assuming jurisdiction to correct those abuses?

If it does mean that, then how many individual taxpayers may be robbed of their property by being denied due process through the connivance of public officers with rogues before such denial of due process becomes a general question of importance?

How many individual taxpayers are required to make a class? How many taxpayers must be so robbed before a general question of importance or a class action is created?

If the guaranty of due process provided by Amendment V is to be limited to taxpayers collectively and generally, or to cases only in which the facts are common to all taxpayers collectively and generally, or to classes of taxpayers, does not the denial of due process to one person or to one member of a class constitute a denial of such right to all other persons, and to all members of that class?

How are classes of taxpayers to be determined? Shall it be by race, color, creed, state of opulence, degree of poverty, political beliefs, or the amount of tax paid or sought?

Does it mean taxpayers are to be classified according to the peculiar facts of their cases? Or, must the facts of each taxpayer's case be common to the facts involved in all other cases of taxpayers, or all others of the same class?

All taxpayers are of a class. Each is equally affected by the denial of due process to one of them.

If taxpayers are to be considered as classes and the rights of some classes protected and the rights of other classes denied, may a member of the unfavored class move over to the favored class, and if so, how? And who does the classifying? Is the classification made by the peculiar facts of each case as contended by Respondent? If the facts

of a particular case are "peculiar" does that determine a taxpayer's classification and warrant denial of due process of law?

If the constitutional rights of the individual person or citizen is not a general question of importance that will cause this Court to assume jurisdiction, then the correlative rights of all individual persons and citizens of the United States will likewise not raise a general question of importance sufficient to cause this Court to assume jurisdiction.

This can only mean that the constitutional rights of all persons and citizens of the United States, as well as of all classes of persons and citizens, may be completely destroyed so long as those constitutional rights are invaded, are violated and are denied such persons and citizens separately.

In short, may an individual taxpayer be robbed with impunity by public officers denying him due process of law, or must all taxpayers be so robbed collectively upon a particular state of facts before a general question of importance is raised sufficient to warrant review by this Court?

In the above mentioned address of the Chief Justice to the American Bar Association he is also reported to have stated:

> "* * * All other cases come within the Court's discretionary jurisdiction, and as has been the custom for some years past, the Court takes such cases only when at least four justices feel that the public importance of the question presented requires its consideration by the Supreme Court."

Surely there must be four justices of this Court who feel that the public importance of the question of denial of due process—whether by the connivance of public officials

with rogues, or otherwise—is sufficient to cause this Court to give consideration thereto.

In the aforesaid address, the Honorable Chief Justice is also reported to have stated:

> "* * * Lawyers might be well-advised, in preparing petitions for certiorari, to spend a little less time discussing the merits of their cases and a little more time demonstrating why it is important that the Court should hear them. * * * What the Court is interested in is the actual, practical effect of the disputed decision—its consequences for other litigants and in other situations. A petition for certiorari should explain why it is vital that the question involved be decided finally by the Supreme Court."

Can there conceivably be a question of wider import, of greater general importance, of more extensive practical effect and of more serious consequences for other litigants in other situations than the denial of due process to any person, when such right is guaranteed to every person by Amendment V to the Constitution.

If due process may be denied to any one person may it not and will it not also be denied to every person—individually or by classes?

If the preservation of the right to due process to each person—or to classes of persons—requires resolving conflicts of opinion on federal questions that have arisen among lower courts and requires the exercise of supervisory power over lower federal courts, then the reason is all the greater and more important why this Court should, in the exercise of its discretion, consider and review questions presenting denial of due process in violation of Amendment V.

Due process as guaranteed by Amendment V, was intended to protect the rights of each person, not only against

the encroachment of other persons, but also against the encroachments of the government itself.

Since the government is charged with the preservation of those rights and the protection of each person's enjoyment of those rights, it follows that in the instant case it was and is as much the duty of Respondent, as it is the duty of this Court, to protect Petitioner's right to due process as to collect revenue desired or sought.

Amendment V to the Constitution is not limited to cases between private persons or classes of persons. It makes no exception of cases involving denial of due process by the government, its agents or officials.

Neither does it make exception of cases involving the government's efforts to collect income tax or other revenue. Neither does it make a distinction between persons and taxpayers.

Denial by the government of due process of law to a person is of far wider import and of greater general importance to ALL PERSONS than the denial of such right in litigation between private persons.

Amendemnt V provides:

> **"NO PERSON shall * * * be deprived of life, liberty, or property, without due process of law; * * *." (Emphasis mine.)**

A government which denies due process of law must necessarily be a despotic government.

The denial of one constitutional right to one person is an assertion of the power—without the right—to deny any or all constitutional rights to other persons; and once indulged perforce requires the continual assertion of such power in justification of the first denial, and inevitably will result in repudiation of all constitutional restraints upon all public officers and will produce tyranny and despotism.

What question of more general importance or of wider

import could be presented to this Court? What question could have greater practical effect and more serious consequences upon all persons, whether litigants or taxpayers, than due process, or condoning the denial of due process of law?

Admittedly the collection of revenue is important, but not more so than the preservation of the right of due process.

If due process is to be sacrificed for increased revenues, then all persons and taxpayers have been stripped not only of their constitutional right to due process but also of their property by denial of that right.

Amendment V does not provide that a person may be denied due process of law in the collection of revenue. On the contrary, it restricts the collection of revenue to the limitations of due process of law.

Due process may not be exchanged for revenue, nor may the collection of revenue be substituted for due process.

These matters were appropriately presented in and by Petitioner's Petition for Certiorari and Brief in Support Thereof, and in Petitioner's Reply to Respondent's Brief in Opposition, in the instant case.

Petitioner is entitled to a re-examination and reconsideration of said Petition for Certiorari and Brief in Support Thereof and his Reply Brief to Respondent's Brief in Opposition, as well as this Petition for Rehearing, to the end that this Court fully understand, not only in what respect the constitutional rights of Petitioner have been violated, but also the grave and far-reaching effect such denial of due process of law will have on all persons and taxpayers.

In short, will this Court grant relief in this case where a person has been denied due process of law by the government, its agents and officials? Will this Court say that the government may substitute the collection of revenue for due process of law?

Will this Court say that due process may be denied or extinguished for the purpose of collecting revenue?

If the violation of the constitutional rights of one person is not of sufficient importance to cause the Court to assume jurisdiction, then why does Amendment V say:

> **"NO PERSON shall * * * be deprived of life, liberty, or property, without due process of law; * * *." (Emphasis mine.)**

Do the words "NO PERSON" mean something other than "no person"? No! Does Amendment V exclude the Government, its officers and agents? No! Does it exclude the collection of revenue, or the attempts or pretenses of its officers and agents to collect "revenue"? No!

Petitioner's Petition for Certiorari comes squarely within and is completely encompassed by Amendment V. It fully and completely presents a general question of importance calling for further review by this Court—notwithstanding Respondent's contention to the contrary and the admitted peculiar facts. It also meets all the qualifications, the limitations, the restrictions and the requirements of the policy of this Court with respect to granting certiorari, as outlined and defined by the Honorable Chief Justice (*supra*).

Respectfully submitted,

O. O. Owens, *Petitioner.*

CERTIFICATE.

Petitioner, O. O. Owens, hereby certifies that the attached Petition for Rehearing presents substantial grounds available to Petitioner not previously presented or urged, is restricted to such grounds, and is herewith presented in the utmost of good faith for this Court's consideration; and said Petition for Rehearing is not presented for delay or for delay only.

.....,
O. O. OWENS,
Petitioner.

Subscribed and sworn to before me, the undersigned Notary Public, this 21st day of February, 1950.

(Seal)

.....,
WM. G. TOBLER,
Notary Public.

My commission expires January 16, 1954.